

15
Office - Supreme Court, U. S.

FILED

APR 11 1945

FRANCIS EDWARD DOWDLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944

No. 1147

MARJORIE HAIR BURTON, individually and as
administratrix of the estate of Frederic A. Burton,
deceased,

Petitioner,

vs.

FREEMAN COAL MINING CORPORATION, a corpo-
ration, WILLIAM J. KRUGLY and MATERIAL
SERVICE CORPORATION, a corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

JOHN J. DOWDLE,

Attorney for Petitioner.

CHARLES H. BORDEN,
Of Counsel.



INDEX

	PAGE
PETITION:	
Summary Statement of Matter Involved.....	2
The Jurisdiction of this Court to grant Certiorari	5
Constitution and Statutes involved.....	8
The Reasons for the Allowance of the Writ.....	8
Questions Presented.....	9

APPENDIX:

Constitution and Federal Statutes.....	11
--	----

CASES CITED IN PETITION

Brown v. Gerdes, 321 U. S. 178, 88 L. Ed. 444, 64 S. Ct. 487.....	8
Campbell v. Porter, 162 U. S. 478, 40 L. Ed. 1044, 16 S. Ct. 871.....	7
Glenny v. Langdon, 98 U. S. 20, 25 L. Ed. 43.....	9
Gochenour, et al. v. George & Francis Ball Foundation, et al., 35 Fed. Supp. 508, 517, affirmed 117 F. 2d 259—cert. den. 313 U. S. 566.....	9
Gross v. Irving Trust Co., 289 U. S. 342, 77 L. Ed. 1243, 53 S. Ct. 605.....	8
Isaacs v. Hobbs Tie & T. Co., 282 U. S. 734, 75 L. Ed. 645, 51 S. Ct. 270.....	8
Leigh v. Green, 193 U. S. 790, 48 L. Ed. 623, 24 S. Ct. 390.....	7
MaKay v. Kalyton, 204 U. S. 458, 51 L. Ed. 566, 27 S. Ct. 346.....	7

	PAGE
Nutt v. Knutt, 200 U. S. 13, 26 S. Ct. 216, 50 L. Ed. 348	6
Pittsburgh & Railway v. Loan & Trust Co., 172 U. S. 493, 43 L. Ed. 528, 19 S. Ct. 238.....	6
Trimble v. Woodhead, 102 U. S. 647, 26 L. Ed. 290..	9
Windsor v. McVeigh, 93 U. S. 274, 23 L. Ed. 914.....	7

STATUTES CITED IN PETITION AND APPENDIX

Constitution and Federal Statutes.....	5, 8, 11
--	----------

Federal Constitution:

Article I, Section 8, Clause 4.....	11
Article III, Section 2 (First).....	11

Federal Bankruptcy Act:

Section 1, Clause (10).....	11
Section 2, (9), (15).....	11, 12
Section 70 a, i.....	12
Section 101.....	12
Section 102.....	12, 13
Section 111.....	13
Section 114.....	13
Section 115.....	13
Section 116.....	13, 14
Section 149.....	14
Section 167.....	14
Section 175.....	14
Section 179.....	14, 15
Section 180.....	15
Section 186.....	15
Section 187.....	15
Section 189.....	15

Section 190.....	15
Section 191.....	16
Section 197.....	16
Section 200.....	16
Section 216.....	16, 17
Section 221.....	17
Section 222.....	17, 18
Section 223.....	18
Section 224.....	18
Section 225.....	19
Section 226.....	19
Section 227.....	19
Section 228.....	19
Federal Statutes.....	5, 8, 11
Judicial Code Section 237(b) 28 U.S.C. 344(b).....	5
Judicial Code Section 256 28 U.S.C. 371.....	11
Judicial Code Section 256, 28 U.S.C. 350.....	8



IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1944

No.

MARJORIE HAIR BURTON, individually and as
administratrix of the estate of Frederic A. Burton,
deceased,

Petitioner,

vs.

FREEMAN COAL MINING CORPORATION, a corpo-
ration, WILLIAM J. KRUGLY and MATERIAL
SERVICE CORPORATION, a corporation,

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF ILLINOIS.**

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your petitioner Marjorie Hair Burton, individually and
as Administratrix of the estate of Frederic A. Burton,
deceased,* respectfully prays that a writ of certiorari

*Fred A. Burton, Defendant-Appellant below, died during
the pendency of the appeal to the Supreme Court of Illinois
and Marjorie Hair Burton, Administratrix, as aforesaid, was
by order of said Court, substituted in his place and stead
(R. 326).

issue to review a final decree of the Supreme Court of Illinois, the highest court of the State of Illinois, which in affirming a decree of the Circuit Court of Cook County, Illinois, decided that the Circuit Court of Cook County, Illinois, without authorization of the bankruptcy court, had jurisdiction to collect and direct the distribution of property which it determined constituted an asset of a debtor, whose estate was being administered by a court of bankruptcy under Chapter X of the Bankruptcy Act.

A petition for rehearing was filed and after being entertained and considered by the Supreme Court of Illinois, was denied on January 15, 1945 (R. 341) the opinion then being slightly modified (R. 342).

SUMMARY AND SHORT STATEMENT OF MATTERS INVOLVED.

This suit stems from proceedings under Chapter X of the Bankruptcy Act, and involves certain lands and leases owned by petitioner (Fred A. Burton) (R. 190, 195) who, prior to September 7, 1938, was President and owner of the Burton Coal Company (R. 100).

The Burton Coal Company and its subsidiary companies* have been debtors in reorganization under Chapter X of the Bankruptcy Act since September 7, 1938 (R. 17, Pars. 9, 305, 306). A plan of reorganization of the Burton Coal Company was confirmed by the Bankruptcy Court on March 27, 1942 (R. 216, 305). The Plan does not include provisions for the settlement or adjustment of claims belonging to the debtor (Plan R. 275, *et seq.*). Neither does the order of confirmation provide

* The Freeman and Seymour Coal Mining Companies were wholly owned subsidiaries of the Burton Coal Company (R. 280) and need not be considered here.

for the retention and enforcement by the Trustee of any claims of the debtor or the estate (Order R. 305, *et seq.*). On April 1, 1942, pursuant to said plan J. Roy Browning, the Trustee (R. 185, 192) transferred property of said debtor to respondent Freeman Coal Mining Corporation (R. 217, 218), a corporation organized for the purpose of acquiring the debtor's property and issuing securities under the Plan (R. 294, 295). On the same day, April 1, 1942, J. Roy Browning, the Trustee, became President of respondent Freeman Coal Mining Corporation (R. 218).

Between September 7, 1938, and April 1, 1942, Browning, as Trustee, paid petitioner (Fred A. Burton) the sum of \$22,451.16 as royalties for the coal mined from petitioner's lands and leases (R. 222, 223).

On June 24, 1942 (R. 1) respondents* brought this suit in the Circuit Court of Cook County, Illinois (referred to as Circuit Court) to impress a trust upon petitioner's lands and leases in favor of the Burton Coal Company, its stockholders and creditors and to have respondents or one or more of them declared successors in interest to said Burton Coal Company (R. 12(a)(b)). An accounting of royalties received by petitioner is also asked (R. 12(c)).

The verified complaint is signed by J. Roy Browning, as President of the respondent, Freeman Coal Mining Corporation (R. 214) and contains a number of allegations relating to transactions of the Burton Coal Company and of its President, Fred A. Burton, prior to the institution of said reorganization proceedings, but the complaint contains no allegation that the Trustee, J. Roy

* The decree favors Respondent Freeman Coal Mining Corporation solely (R. 90, 352, 353). The respondents William J. Krugly and Material Service Corporation are not necessary for a consideration of this application.

Browning, by order of the Bankruptcy Court or otherwise transferred to the Freeman Coal Mining Corporation the cause of action upon which this suit is based. In a word, the suit is not brought by an assignee of a trustee in reorganization proceedings.

Upon the trial J. Roy Browning, the Trustee testified (R. 217) that the bill of sale which the court approved as part of the plan of reorganization contained "practically" the same conditions as paragraph 12 of the complaint, which recites that the Trustee on January 15, 1942 made a proposal for the reorganization of the debtor Burton Coal Co. (R. 9, Par. 12). There is no order of the Bankruptcy Court approving the purported bill of sale referred to by Browning, and what purports to be an order of the Bankruptcy Court is in fact the Trustee's petition for approval of certain documents (Plaintiff's Ex. 34, R. 311). Said purported Bill of Sale was not recorded (R. 221, 222). The trustee, J. Roy Browning, then testified that the Court approved the plan of reorganization and amended the plan of consummation (R. 217). There is nothing in this record to show any such action on the part of the Bankruptcy Court. The order confirming the plan of reorganization recites, among other things, that no objections were filed to the plan or to the confirmation of the plan (R. 305, 306).

A chronology of the proceedings had in the Bankruptcy Court appears in Appendix A. Extracts from the Plan of Reorganization appear in Appendix B.

The cause in the Circuit Court was referred to and heard by a Master-in-Chancery who found the issues for the respondents and against the petitioner (R. 72).

Exceptions filed to the Master's amended report were overruled by the Court and the Court entered a decree in accordance with the recommendations of the

Master (R. 90, 95), determining among other things that "Freeman Coal Mining Corporation, be deemed to have succeeded to the rights and interests of said Burton Coal Company, its stockholders and creditors, and of J. Roy Browning as the Trustee duly appointed and qualified in certain proceedings entitled, 'In re Burton Coal Company, Freeman Coal Mining Company and Seymour Coal Mining Company, Consolidated Cause No. 69296 in the District Court of the United States for the Northern District of Illinois' " (R. 92).

From the decree of the Circuit Court petitioner appealed to the Supreme Court of Illinois, which affirmed the decree of the Circuit Court (R. 324).

Upon petition for rehearing petitioner challenged the jurisdiction of the State Court as to the subject matter and the right of a State court to administer part of a debtor estate that was being administered by a court of bankruptcy (R. 330).

The petition for rehearing was denied January 15, 1945 (R. 341).

JURISDICTION OF THIS COURT TO GRANT CERTIORARI.

The jurisdiction of this Court is invoked under the provisions of Section 237(b) of the judicial code, 28 U.S.C. Section 344(b).

The federal questions sought to be reviewed by this Court were first raised in the trial court by objections filed to the Master's amended report (R. 75-82). The objections standing as exceptions were overruled by the Court and the report and recommendations of the Master were adopted and confirmed (R. 90, 91).

The following findings, among others, are contained in the amended report of the Master and show that the Federal questions were presented, were necessarily involved, were considered and decided adversely.

"The defendants argue that the failure of Browning, as trustee in the reorganization proceedings to file the suit against them precludes the filing of the suit by plaintiffs in the instant suit. The Master finds, in this connection, that no failure of Browning, as trustee in the reorganization proceedings, to file suit, could prejudice the rights of the plaintiffs herein" (R. 67, 68).

"The Master is of the opinion, however, that, assuming that Browning did fail to inventory the claim of title to the land in question as an asset of the estate in the Federal Court, and did not bring it to the attention of the court and the creditors in those proceedings, that Browning's failure to do so, if such is a fact, cannot be attacked collaterally in this suit, and is not available to defendants as a defense to this suit" (R. 69).

A party who insists that a judgment cannot be rendered against him consistently with the statutes of the United States asserts a right or immunity under such statutes. In this situation this court has jurisdiction. *Nutt v. Knut*, 200 U. S. 13, 18-19, 26 S. Ct. 216, 50 L. Ed. 348; *Pittsburgh & Railway v. Loan & Trust Co.*, 172 U. S. 493, 507-510, 43 L. Ed. 528, 19 S. Ct. 238.

The Federal questions were then raised in the Supreme Court of Illinois in a petition for rehearing filed by petitioner, which directly challenged the State court's jurisdiction of the subject matter, as follows: "The opinion of the Court fails to take into consideration two fundamental principles: (1) a court of bankruptcy has exclusive jurisdiction over the property and assets of the bankrupt; and (2) suits to recover assets allegedly belong-

ing to the bankrupt estate must be brought by or in the name of the trustee" (R. 330).

This Court has repeatedly held that the act of a tribunal beyond its powers is null and void, and can be attacked at any time, even in the first instant on appeal. (*Campbell v. Porter*, 162 U. S. 478, 40 L. ed. 1044, 16 S. Ct. 871.) And it may not be validated either by waiver or consent. (*Windsor v. McVeigh*, 93 U. S. 274, 23 L. ed. 914.)

Regarding the stage in the proceedings in the State Court at which the federal question might effectively be raised, this court, in the case of *McKay v. Kalyton*, 204 U. S. 458, at 463, 51 L. ed. 566, 27 S. Ct. 346, says:

"True it is that the immunity which was asserted was first claimed in a petition for rehearing, but as the question was raised, was necessarily involved and was considered and decided adversely by the state court, there is jurisdiction. *Leigh v. Green*, 193 U. S. 790." (48 L. Ed. 623, 24 S. Ct. 390.)

Although petitioner does not agree with the conclusion of the Supreme Court of Illinois, the opinion of the Court clearly shows that the Federal issue was presented, was necessarily involved, was considered, and decided adversely. The Supreme Court of Illinois in its opinion says (R. 352):

"The action of the trustee, and his failure to exercise the functions within his power as such trustee, should not be the means of affording Burton and his wife a basis for retention of title to the property as against the claim of the corporation so defrauded."

The Supreme Court of Illinois having thus condemned the Trustee for his failure to discharge a duty imposed upon him by a Federal statute, then assumes jurisdiction to correct what it necessarily considers a defect in the

administration of the bankruptcy laws by the Federal court and in its opinion concludes:

“The evidence proclaims the fraud practiced upon Burton Coal Company and its creditors, and the findings of the master in chancery, approved by the chancellor, to the effect, among other things, that a trust should be impressed upon the property in favor of the Burton Coal Company, which, in turn, should be deemed to have been conveyed to the Freeman Coal Mining Corporation, one of the plaintiffs, are amply supported by the evidence.”

The petition for rehearing was denied January 15, 1945, and this application is made within the three months allowed by 28 U. S. C. 350.

CONSTITUTION AND STATUTES INVOLVED.

The sections of the Constitution of the United States and the Federal statutes involved will be found in Appendix.

REASONS FOR THE ALLOWANCE OF THE WRIT.

In holding that the Circuit Court, without authorization of the Bankruptcy Court, had jurisdiction to determine the rights of a debtor, its stockholders and creditors in proceedings for corporate reorganization under Chapter X of the Bankruptcy Act, the Supreme Court of Illinois has decided an important Federal question of substance in a way in conflict with the decisions of this Court, including the cases of *Isaacs v. Hobbs Tie and T. Co.*, 282 U.S. 734, 737, 75 L. Ed. 645, 51 S. Ct. 270; *Gross v. Irving Trust Co.*, 289 U.S. 342, 344, 345, 77 L. Ed. 1243, 53 S. Ct. 605; *Brown v. Gerdes*, 321 U.S. 178, 183, 184, 88 L. Ed. 444, 64 S. Ct. 487.

In holding that Respondents, as distinguished from the

Trustee appointed by the Bankruptcy Court, had the unqualified right to institute and prosecute this suit and in directing the distributing of an asset which it determined belongs to a debtor in proceedings for corporate reorganization under Chapter X of the Bankruptcy Act, the Supreme Court of Illinois has decided an important federal question of substance in a manner in conflict with the decisions of this Court and other federal courts, including the cases of *Glenny v. Langdon*, 98 U.S. 20, 25 L. Ed. 43; *Trimble v. Woodhead*, 102 U.S. 647, 26 L. Ed. 290; *Gochenour, et al. v. George & Francis Ball Foundation, et al.*, 35 Fed. Supp. 508, 517, affirmed 117 F. 2d 259—cert. den. 313 U.S. 566.

QUESTIONS PRESENTED.

The following questions are presented by the record in this cause:

1. Whether a court of bankruptcy, whose jurisdiction has been invoked, is given exclusive jurisdiction over all the property and assets of a debtor and the distribution thereof as it directs?
2. Whether suits to recover assets belonging to a debtor estate must be brought by or in the name of the Trustee under the direction of the Bankruptcy Court?
3. Whether a plan of reorganization confirmed by a court of Bankruptcy is conclusive of the property dealt with by the Trustee and binding upon the debtor, its stockholders, creditors and the corporation organized for the purpose of carrying out the plan?

WHEREFORE, your petitioner respectfully prays that this

Petition for a Writ of Certiorari to the Supreme Court
of the State of Illinois be granted.

MARJORIE HAIR BURTON,

Petitioner,

*Individually and as Administratrix
of the Estate of Frederic A. Burton,
deceased.*

By JOHN J. DOWDLE,

Her Attorney.

CHARLES H. BORDEN,

Of Counsel.

